

Cause No. D-1-GV-09-001952

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	
CES ENVIRONMENTAL	§	TRAVIS COUNTY, TEXAS
SERVICES, INC. and PORT	§	
ARTHUR CHEMICAL &	§	
ENVIRONMENTAL SERVICES,	§	
LLC,	§	
Defendants.	§	419th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date came the State of Texas, through Texas Attorney General Greg Abbott, and Defendants CES Environmental Services Inc. (“**CES**”) and Port Arthur Chemical & Environmental Services LLC (“**PACES**”). The parties submitted this Agreed Final Judgment (“**Final Judgment**”) to the Court for approval.

I. Background

1.1. Defendant CES operated an industrial cleaning and waste operation at 4904 Griggs Road, Houston, Texas 77021, as well as an adjacent warehouse facility on Wayland Road (collectively, the “**Houston Plant**”). CES acquired the Houston Plant in approximately 2002 and operated it thereafter.

1.2. Defendant PACES is the owner of a chemical plant at 2420 South Gulfway Drive, Port Arthur, Texas 77640 (the “**Port Arthur Plant**”). PACES acquired the Port Arthur Plant in December 2008 and operated it thereafter.

1.3. On August 16, 2010, CES and PACES filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. CES and PACES operated the Houston Plant and the Port Arthur Plant, respectively, until the bankruptcy court converted each bankruptcy into a Chapter 7 bankruptcy and appointed a trustee under Chapter 7 for each bankruptcy estate.

1.4. The State of Texas alleges that CES and PACES each violated Texas environmental laws and regulations. CES and PACES each deny these allegations.

1.5. The State of Texas and PACES previously entered into an Agreed Judgment Against Port Arthur Chemical & Environmental Services, LLC that was entered by this Court on July 7, 2011. That judgment was interlocutory because the claims against CES remained pending. This Final Judgment supersedes that July 7, 2011, interlocutory judgment and is the sole and final judgment in this case.

II. Stipulations

In agreeing to this Final Judgment, the parties hereby stipulate to the following:

2.1. The State of Texas, CES, and PACES understand and agree to the terms of this Final Judgment and waive any right to appeal its validity.

2.2. This Final Judgment resolves, and the State of Texas hereby releases, any and all environmental claims against CES and PACES, known or unknown, which (a) were made or could have been made in this lawsuit or (b) arise out of the events giving rise to this lawsuit.

2.3. CES and PACES deny the occurrence of any violation of law. The entry of this judgment is not an admission by CES or PACES of any violation alleged by the State

of Texas. The parties have agreed to this Final Judgment solely in the interest of compromise and judicial efficiency, to avoid the uncertainties and costs of litigation, and to further the efficient administration of the CES and PACES bankruptcy estates.

2.4. This Final Judgment complies with all statutory, jurisdictional, and procedural requisites necessary for entry and enforcement.

2.5. The State of Texas, CES, and PACES agree that this Final Judgment is not ambiguous and that they actively negotiated this Final Judgment, understand the duties placed upon them by this Final Judgment, and have read the terms of this Final Judgment.

2.6. CES and PACES are willing to comply with the terms of this Final Judgment and waive the necessity of the issuance and service of writs of injunction pursuant to Rules 688 and 689 of the Texas Rules of Civil Procedure.

2.7. This Final Judgment is enforceable pursuant to Rule 692 of the Texas Rules of Civil Procedure.

III. Monetary Awards

It is hereby ORDERED, ADJUDGED, and DECREED as follows:

3.1. The State shall have judgment from and against CES for a civil penalty of \$2,258,000. This amount shall be treated solely as a claim under 11 U.S.C. 726(a)(4).

3.2. The State shall have judgment from and against PACES for a civil penalty of \$976,162.50. This amount shall be treated solely as a claim under 11 U.S.C. 726(a)(4).

3.3. Costs of court are taxed against the party incurring them.

IV. Injunction Against CES

It is further ORDERED, ADJUDGED, and DECREED that CES, its officers, agents, servants, and employees and all persons acting in concert with, on behalf of, or under the direct or indirect control of CES are permanently enjoined as set forth below:

4.1. The following General Provisions apply to the injunctive provisions in this Paragraph IV of the Final Judgment of this Court:

4.1.A “Solid waste” means solid waste as such term is defined in Tex. Health & Safety Code § 361.003(34, 35) and 30 Tex. Admin. Code § 335.1(138).

4.1.B The “Effective Date” is the date on which the Court signs this Final Judgment.

4.1.C The phrase “Immediately” means that Defendant CES shall have started and completed all planning, action, and work necessary to comply with the applicable provision of the injunction in this Paragraph IV by no later than 5 o’clock P.M. Central Standard Time (“CST”) on the 7th calendar day after the Effective Date.

4.1.D The abbreviation “TCEQ” shall mean the Texas Commission on Environmental Quality.

4.2. CES will use all reasonable best efforts to complete lawful removal of any solid waste, wastewater, oily wastes, used oil, materials containing alcohol, byproducts containing caustics of any kind, spent caustics of any kind, sulfidic caustic, naphthenic caustic, phenolic caustic, cresylic caustic, sulfuric acid, spent sulfuric acid, hydrogen sulfide or materials containing hydrogen sulfide, and mercaptans or materials containing mercaptans on the Houston Plant site, including without limitation, the cleaning of unit #

1004 and unit #25141 (which shall be treated as a first priority), as sufficient funds are or become available to do so.

4.3. Once CES has fully complied with the removal obligation in ¶ 4.2, it shall administratively surrender all authorizations, registrations, and/or permits issued or approved by the TCEQ by sending a letter to this effect to TCEQ. No authorizations, registrations, and/or permits issued or approved by the TCEQ to CES shall be transferred to any other person or entity.

4.4. Except as necessary to comply with the removal obligation in ¶ 4.2, effective Immediately, CES shall not take into or onto the premises of the Houston Plant any solid waste, wastewater, oily wastes, used oil, materials containing alcohol, byproducts containing caustics of any kind, spent caustics of any kind, sulfidic caustic, naphthenic caustic, phenolic caustic, cresylic caustic, sulfuric acid, spent sulfuric acid, hydrogen sulfide or materials containing hydrogen sulfide, and mercaptans or materials containing mercaptans.

4.5. Except as necessary to comply with the removal obligation in ¶ 4.2 effective Immediately, CES shall not take into or onto the premises of the Houston Plant any material that contains, generates, evolves, or that may contain, generate, or evolve hydrogen sulfide or any mercaptan compound, including without limitation, solid waste, by-products containing caustics of any kind, spent caustics of any kind, sulfidic caustic, naphthenic caustic, phenolic caustic, cresylic caustic, sulfuric acid, spent sulfuric acid, hydrogen sulfide or materials containing hydrogen sulfide, and/or mercaptans or materials containing mercaptans.

4.6. Subsequent owners of the Houston Plant, including purchasers from CES, are not bound by this Injunction or Final Judgment.

V. Injunction Against PACES

It is further ORDERED, ADJUDGED, and DECREED that PACES, its officers, agents, servants, and employees and all persons acting in concert with, on behalf of, or under the direct or indirect control of PACES are permanently enjoined as set forth below:

5.1. The following General Provisions apply to the injunctive provisions in this Paragraph V of the Final Judgment of this Court:

5.1.A “Solid waste” means solid waste as such term is defined in Tex. Health & Safety Code § 361.003(34, 35) and 30 Tex. Admin. Code § 335.1(138).

5.1.B The “Effective Date” is the date on which the Court signs this Final Judgment.

5.1.C The phrase “Immediately” means that Defendant PACES shall have started and completed all planning, action, and work necessary to comply with the applicable provision of the injunction in this Paragraph V by no later than 5 o’clock P.M. Central Standard Time (“CST”) on the 7th calendar day after the Effective Date.

5.1.D The abbreviation “TCEQ” shall mean the Texas Commission on Environmental Quality.

5.2. Effective Immediately, PACES shall not take into or onto the premises of the Port Arthur Plant any solid waste, wastewater, oily wastes, used oil, materials containing alcohol, byproducts containing caustics of any kind, spent caustics of any

kind, sulfidic caustic, naphthenic caustic, phenolic caustic, cresylic caustic, sulfuric acid, spent sulfuric acid, hydrogen sulfide or materials containing hydrogen sulfide, and mercaptans or materials containing mercaptans.

5.3. Effective Immediately, PACES shall not take into or onto the premises of the Port Arthur Plant any material by means of receiving said material by barge or barges unloaded at the Port Arthur Plant.

5.4. Effective Immediately, PACES shall not take into or onto the premises of the Port Arthur Plant any material that contains, generates, evolves, or that may contain, generate, or evolve hydrogen sulfide or any mercaptan compound, including without limitation, solid waste, by-products containing caustics of any kind, spent caustics of any kind, sulfidic caustic, naphthenic caustic, phenolic caustic, cresylic caustic, sulfuric acid, spent sulfuric acid, hydrogen sulfide or materials containing hydrogen sulfide, and/or mercaptans or materials containing mercaptans.

5.5. PACES shall Immediately administratively surrender all authorizations, registrations, and/or permits issued or approved by the TCEQ and withdraw its NSR application by sending a letter to this effect to TCEQ. No authorizations, registrations, and/or permits issued or approved by the TCEQ to PACES shall be transferred to any other person or entity.

5.6. Subsequent owners of the Port Arthur Plant, including purchasers from PACES, are not bound by this Injunction or Final Judgment.

VI. General Terms

6.1. This is a final judgment that finally disposes of all claims in the captioned lawsuit between the State of Texas, CES, and PACES.

6.2. This judgment is agreed to as part of a global settlement agreement between the State of Texas, CES, PACES, and certain other parties. This Final Judgment may not be entered and shall not be effective until: (a) that global settlement agreement and this Final Judgment has been approved by executive management of the Office of the Attorney General of Texas, the TCEQ, the United States Environmental Protection Agency, the United States Department of Justice, and the bankruptcy court in which the bankruptcies of CES and PACES are pending and (b) any applicable publication and approval process required under Texas or federal law for the global settlement agreement or this Final Judgment has been completed.

It is SO ORDERED.

Signed this ____ day of _____, 2013.

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division

ANTHONY W. BENEDICT
Assistant Attorney General
State Bar No. 02129100
anthony.benedict@texasattorneygeneral.gov
Environmental Protection Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
512 463 2012
512 320 0911 (fax)

Attorneys for Plaintiff State of Texas

K.A.D. Camara
State Bar No. 24062646
CAMARA & SIBLEY LLP
4400 Post Oak Parkway, Suite 2700
Houston, Texas 77027
713 966 6789
713 583 1131 (fax)

*Attorneys for Defendant
CES Environmental Services Inc.*

Fred Wahrlich
State Bar No. 20666500
MUNSCH HARDT KOPF & HARR PC
700 Louisiana Street, Suite 4600
Houston, Texas 77002
713 222 1470
713 222 1475 (fax)

*Attorneys for Defendant
Port Arthur Chemical &
Environmental Services LLC*